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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/501,434

11/17/2004

Peter Baur

CS-8269/LeA 35,439

7607

34469

7590

04/01/2009

BAYER CROPSCIENCE LP

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EXAMINER

SULLIVAN, DANIELLE D

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

04/01/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/501,434	<b>Applicant(s)</b> BAUR ET AL.	
	<b>Examiner</b> DANIELLE SULLIVAN	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

Claims 17-36 are pending examination.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/07/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

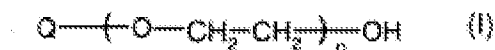
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogt et al. (US 6,656,883) in view of Feucht et al. (US 6,395,684), herein '684 and Feucht et al. (6,562,760), herein '760.

### **Applicant's Invention**

Applicant claims a composition comprising formula (I):

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in which

n represents 4, 5, 6, 7 or 8 and

Q represents a branched tridecyl radical, and one or more herbicidally active triazolinones.

Applicant claims a method of improving the penetration of an herbicidal active triazolinone into a plant comprising applying to a plant formula (I) and one or more herbicidal active triazolinones. Claims 18, 25 and 27 limit n to 6 mole ethoxylate. Claims 19, 24 and 27 limit Q to isotridecyl. Claims 20, 23, 27 and 31 limit the triazolinone to flucarbazone-sodium or propoxycarbazine-sodium with claim 32 further limiting it to propoxycarbazine-sodium. Claims 28, 33 and 34 limit the composition to include additives added to form compositions having ranges of a) formula (I) (0.1-95%, 0.5-40% and 0.02-0.25% respectively), b) triazolinones (0.1-95%, 2.5-70% and 0.01-0.25% respectively) and c) additives (4.9-80%, 5-50% and 0-99% respectively). Claim 22 limits the ratio of triazolinone of formula (I) from 1:0.5 to 1:5.

### Determination of the scope and the content of the prior art

#### (MPEP 2141.01)

Vogt et al. teach a formulation comprising a) a herbicide, b) a solid carrier and c) formula (I) as a nonionic surfactant (abstract). Depending on the active ingredient the surfactant has good emulsifying, dispersing and wetting properties (column 5, lines 33-38). The herbicides comprise 1-30% by weight of the entire formulation (column 4, lines

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50-52). The surfactants are 1-15% of the entire formulation (column 5, lines 29-32).

The carrier is 30-60% by weight the whole formulation (column 5, lines 9-12).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Vogt et al. do not refer to formula (I) as a penetration enhancer. However, Vogt et al. do teach that formula (I) has good emulsifying and dispersing properties. Hence, it is the Examiners position that surfactants of formula (I) which aid in dispersion are inherently penetration enhancers.

Vogt et al. do not teach the specific herbicides are the triazolinones flucarbazone-sodium or propoxycarbazone-sodium. It is for this reason that Feucht et al. ('760 and '684) are joined.

Feucht et al. ('760) teach the herbicidal compound flucarbazone-sodium and methods for selective control of weeds by applying the compositions together with surfactants and/or customary extenders which may be formulated as wettable powders (abstract; column 5, lines 1-14).

Feucht et al. ('684) teach the herbicidal compound propoxycarbazone-sodium and methods for selective control of weeds by applying the compositions together with surfactants and/or customary extenders which may be formulated as wettable powders (abstract; column 5, lines 5-17).

**Finding of prima facie obviousness**

### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Vogt et al., '760 and '684 to formulate a herbicidal composition comprising a Formula (I) (where  $n=6$  and Q is isotridecyl) and triazolinones of formula (II) such as, flucarbazone-sodium or propoxycarbazone-sodium. One would have been motivated to include flucarbazone-sodium or propoxycarbazone-sodium because '760 and '684 teach that flucarbazone-sodium and propoxycarbazone-sodium are herbicides that can be formulated with other additives and adjuvants. Hence, one of ordinary skill would have been motivated to substitute flucarbazone-sodium or propoxycarbazone-sodium in place of the herbicide taught by Vogt et al. in order to achieve a new herbicidal formulation comprising triazolinones.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pilgrim (3,884,910).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Art Unit 1616

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